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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,617	08/28/2003	Shigeharu Kanemoto	1579.1006	5294

21171 7590 06/29/2005

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EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/649,617

Applicant(s)

KANEMOTO ET AL.

Examiner

Anthony Weier

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION*****Election/Restrictions***

Applicant's election with traverse of Group I in the reply filed on 4/1/05 is acknowledged. The traversal is on the ground(s) that searching both Groups would not be a serious burden on the Examiner. This is not found persuasive because the search and strategy of searching is not mutually exclusive for both inventions. It is noted that although there is overlap in language between the two groups of claims, the search strategy would still be different as searching the apparatus, for example, would not be restricted by method-type limitations and searching the method would not necessarily be restricted by recited apparatus limitations set forth therein. The requirement is still deemed proper and is therefore made FINAL.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 7-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 10, 11, and 12 of U.S. Patent No. 6832545 in view of Satake (U.S. Patent No. 4488481).

The claims differ in that instant claim 7 calls for additional means of smoothing the grain surfaces of the polished rice after removal of the starchy granular material with bran captured wherein said means include a porous wall cylinder arranged horizontally, a second hollow shaft with stirring slats as called for in the instant claims and an air blowing device as claimed and wherein the mixing/stirring means are connected to the smoothing means coaxially and wherein the smoothing means has a discharge device at a distal end portion thereof which has a resistance device provided to adjust the pressure in the porous cylinder. The claims of U.S. Patent No. 6832545 recite further polishing means of the grain after treatment with starch to remove bran (e.g. claim 9). It is known in the art to provide the particular smoothing means as set forth in the instant claims. Satake (U.S. Patent No. 4488481) discloses such a device (see Figure 1) as claimed having the particular horizontal smoothing means with porous wall cylinder, use of air, stirring slats, and coaxial mixing means wherein a distal end of the smoothing device has a resistance device for adjusting pressure within the porous wall cylinder (unlabelled device at the left most portion of the cylinder in Figure 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included said smoothing means in the claimed process of U.S. Patent No. 6832545 as an added device to provide polishing to a greater desired degree above that provided in view of U.S. Patent No. 6832545 alone.

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Claim 11 further calls for a particular method limitation of the device; that is, the particular pressure setting for the porous wall cylinder. It should be noted that the manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself. In re Otto, 136 USPQ 458. Nevertheless, the device of Satake would clearly have the ability to affect such pressure, particularly due to the resistance device mentioned above.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

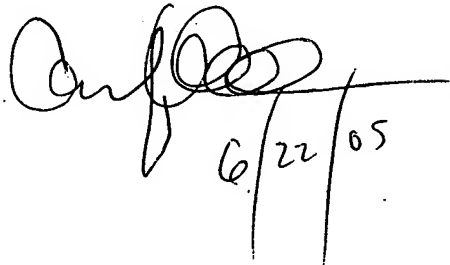
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier  
Primary Examiner  
Art Unit 1761

Anthony Weier  
June 22, 2005



6/22/05